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FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY SP DEPUTY

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 U.S. EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION,

17 Plaintiff,

18 v.

19 UNION PACIFIC RAILROAD CO.,
20 and DOES 1-11, Inclusive,

21 Defendants.

CASE NO.:

'07 CV 1707 W

NLS

COMPLAINT - CIVIL RIGHTS /
EMPLOYMENT
DISCRIMINATION

(42 U.S.C. §§ 2000e, *et seq.*)

JURY TRIAL DEMAND

22 NATURE OF THE ACTION

23 This is an action under Title VII of the Civil Rights Act of 1964 and Title I of
24 the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of
25 sex, female, and to make whole Lucy Velasquez who was adversely affected by such
26 practices. Plaintiff United States Equal Employment Opportunity Commission
27 ("Plaintiff" or "Commission") alleges that Union Pacific Railroad Co. ("Defendant")
28 discriminated against Charging Party Lucy Velasquez when she was denied
promotion to a System Material Foreman position on the basis of her sex, female.

JURISDICTION AND VENUE

1
2 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
3 1337, 1343, and 1345.

4 2. This action is authorized and instituted pursuant to Section 706(f)(1) and
5 (3) and Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42
6 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of
7 1991, 42 U.S.C. § 1981a.

8 3. The employment practices alleged to be unlawful were committed within
9 the jurisdiction of the United States District Court for the Southern District of
10 California.

PARTIES

11
12 4. Plaintiff, United States Equal Employment Opportunity Commission, is
13 the federal agency charged with the administration, interpretation, and enforcement of
14 Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3)
15 and Section 707 of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

16 5. At all relevant times, Defendant Union Pacific Railroad Co. has
17 continuously been doing business nationwide, including in the State of California and
18 in the jurisdiction of the United States District Court of the Southern District of
19 California. At all relevant times, Defendant has continuously employed fifteen (15) or
20 more persons.

21 6. At all relevant times, Defendant Union Pacific Railroad Co. has
22 continuously engaged in an industry affecting commerce within the meaning of
23 Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. § 2000e(b), (g), and (h).

24 7. At all relevant times, Defendant Union Pacific Railroad Co. employed
25 Charging Party Lucy Velasquez.

26 8. All of the acts and failures to act alleged herein were duly performed by
27 and attributable to all Defendant(s), each acting as a successor, agent, alter ego,
28 employee, indirect employer, joint employer or under the direction and control of the

1 others, except as specifically alleged otherwise. Said acts and failures to act were
2 within the scope of such agency and/or employment, and each Defendant participated
3 in, approved and/or ratified the unlawful acts and omissions by the other Defendant(s)
4 complained of herein. Whenever and wherever reference is made in this Complaint to
5 any act by a Defendant or Defendants, such allegations and reference shall also be
6 deemed to mean the acts and failures to act of each Defendant acting individually,
7 jointly, and/or severally.

8 9. Plaintiff is ignorant of the true names and capacities of each Defendant
9 sued as DOE 1 through 8, inclusively, and therefore Plaintiff sues said defendant(s) by
10 fictitious names. Plaintiff reserves the right to amend the complaint to name each
11 DOE defendant individually or corporately as it becomes known. Plaintiff alleges that
12 each DOE defendant was in some manner responsible for the acts and omissions
13 alleged herein and Plaintiff will amend the complaint to allege such responsibility
14 when the same shall have been ascertained by Plaintiff.

15 **CONDITIONS PRECEDENT**

16 10. More than thirty (30) days prior to the institution of this lawsuit,
17 Charging Party Lucy Velasquez ("Velasquez") filed a charge with the Commission
18 alleging that Defendant Union Pacific Railroad Co. violated Title VII.

19 11. Prior to institution of this lawsuit, all conditions precedent were satisfied.
20 The Commission's representatives attempted to eliminate the unlawful employment
21 practices hereinafter alleged and to affect voluntary compliance with the Act through
22 informal methods of conciliation.

23 **STATEMENT OF CLAIMS**

24 12. Since at least February 2005, Defendant has engaged in unlawful
25 employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-
26 2(a)(1) at its facility in the State of California. Defendant denied Lucy Velasquez
27 promotion to a System Material Foreman position on the basis of her sex, female,
28 despite Velasquez having more seniority than the selected male applicants. In

1 response to Velasquez' union grievance that she had been wrongfully denied the
2 promotion, one of the alleged discriminating officials stated something to the effect
3 that he "didn't think a woman could do the job because of the physical nature of the
4 work." Further, during 2006, all thirty (30) System Material Foreman positions in
5 Union Pacific Railroad's Western Region were held by male employees.

6 13. The effect of the practices complained of as described in paragraph 12
7 has been to deprive Lucy Velasquez of equal employment opportunities and otherwise
8 adversely affect her status as an employee, because of their sex, female.

9 14. The unlawful employment practices described above were intentional
10 within the meaning of the Civil Rights Act of 1991.

11 15. The unlawful employment practices described above were done with
12 malice or with reckless indifference to the federally protected rights of Lucy
13 Velasquez.

14 16. As a direct and proximate result of Defendant's acts as described above,
15 Lucy Velasquez has suffered pain and suffering, inconvenience, loss of enjoyment of
16 life, humiliation and damages, all to be proven at trial.

17 17. As a direct and proximate result of Defendant's acts as described above,
18 Lucy Velasquez suffered a loss of earnings in an amount to be proven at trial.

19 **PRAYER FOR RELIEF**

20 Wherefore, the Commission respectfully requests that this Court:

21 A. Grant declaratory relief that Defendant has violated Title VII by
22 discriminating in its promotion practices on the basis of sex, female;

23 B. Grant a permanent injunction enjoining Defendant, its respective
24 officers, successors, assigns, agents, and all persons in active concert or participation
25 with them, from engaging in any employment practice which discriminates on the
26 basis of sex (female);

27 C. Order Defendant to institute and carry out policies, practices, and
28 programs which provide equal employment opportunities, and which eradicate the

1 effects of its past and present unlawful employment practices on the basis of sex,
2 female;

3 D. Grant a judgment requiring Defendant to make Lucy Velasquez whole by
4 paying appropriate back pay, prejudgment interests, lost benefits, rightful place
5 employment, and compensatory damages in amounts to be determined at trial;

6 E. Grant a judgment requiring Defendant to make Lucy Velasquez whole
7 by providing compensation for past and future non-pecuniary losses resulting from
8 the unlawful practices as described above, including, but not limited to emotional pain
9 and suffering, inconvenience, loss of enjoyment of life, and humiliation in amounts to
10 be determined at trial;

11 F. Order Defendant to pay Lucy Velasquez punitive damages for its
12 malicious and reckless conduct as described above, in amounts to be determined at
13 trial;

14 G. Grant such further relief as the Court deems necessary and proper in the
15 public interest; and

16 H. Award the Commission its costs of this action.

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JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully Submitted,

Dated: August 28, 2007

RONALD COOPER,
General Counsel

JAMES LEE,
Deputy General Counsel

GWENDOLYN YOUNG REAMS,
Associate General Counsel

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 "L" Street, N.W.
Washington, D.C. 20507

By: 

ANNA Y. PARK
Regional Attorney

CONNIE K. LIEM
Senior Trial Attorney

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

JD-46

(7/24/07)

CIVIL COVER SHEET

The JD-46 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docketing sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

DEFENDANTS

UNION PACIFIC RAILROAD CO., and DOES
Inclusive

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego
SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

BY *10* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Anna Y. Park (213) 894-1083
Connie Liem (619) 557-7282
U.S.E.E.O.C.
255 E. Temple St., 4th Floor, Los Angeles

ATTORNEYS (IF KNOWN)

'07 CV 1707 W NLS

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☒ U.S. Government Plaintiff ☐ Federal Question
(U.S. Government Not a Party)
- ☐ U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- Citizen of This State ☐ Incorporated or Principal Place of Business in This State ☐
- Citizen of Another State ☐ Incorporated and Principal Place of Business in Another State ☐
- Citizen or Subject of a Foreign Country ☐ Foreign Nation ☐

IV. CAUSE OF ACTION (CITE THE CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices. 42 USC 2000

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	JURISDICTION/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 100 Aggravation	<input type="checkbox"/> 471 Appeal (41 USC 116)	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 110 Airplane	<input type="checkbox"/> 201 Other Food & Drug	<input type="checkbox"/> 472 Unemployment (42 USC 132)	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Venture of Property 21 USC 881	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 420 Unions and Banking
<input type="checkbox"/> 140 Hospital Malpractice	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Logistical Laws	<input type="checkbox"/> 430 Copyright	<input type="checkbox"/> 430 Commerce/ICC Ratecase
<input type="checkbox"/> 150 Recovery of Corporate Control & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employee's Liability	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 440 Patent	<input type="checkbox"/> 440 Deposition
<input type="checkbox"/> 160 Medical Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Rule	<input type="checkbox"/> 450 Trademark	<input type="checkbox"/> 470 Redistricting Influenced and Camp Organization
<input type="checkbox"/> 170 Recovery of Unlawful Share of Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 180 Recovery of Unlawful Share of Veterans Unions	<input type="checkbox"/> 350 Airplane Vehicle	<input type="checkbox"/> 670 Other	<input type="checkbox"/> 601 HIA (1345b)	<input type="checkbox"/> 490 Securities/Unemployment Exchange
<input type="checkbox"/> 190 Shareholders Suits	<input type="checkbox"/> 355 Airplane Vehicle Product Liability	<input type="checkbox"/> LABOR	<input type="checkbox"/> 602 RIA/Lump (423)	<input type="checkbox"/> 500 Securities/Unemployment Exchange
<input type="checkbox"/> 200 Contract Product Liability	<input type="checkbox"/> 360 Labor Personal Injury	<input type="checkbox"/> 700 Fair Labor Standards Act	<input type="checkbox"/> 603 DIWD/DIWW (405(g))	<input type="checkbox"/> 510 Customer Challenge 12 USC
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 604 SSID Title XVI	<input type="checkbox"/> 520 Agricultural Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 605 RIA (405(g))	<input type="checkbox"/> 530 Economic Stabilization Act
<input type="checkbox"/> 220 Eminent Domain	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 540 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Eviction	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 750 Other Labor Legislation	<input type="checkbox"/> 670 Labor (L. 5. Plaintiff or Defendant)	<input type="checkbox"/> 550 Energy Allocation Act
<input type="checkbox"/> 240 Rent to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 760 Expt. Rel. Inv. Security Act	<input type="checkbox"/> 671 IRS - Third Party 26 USC 1604	<input type="checkbox"/> 560 Freedom of Information Act
<input type="checkbox"/> 250 Rent to Land	<input type="checkbox"/> 445 Labor - 1st Rights			<input type="checkbox"/> 570 Appraisal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 260 Rent to Land				<input type="checkbox"/> 580 Constitutionality of State
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VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ Removal from State Court ☐ Remanded from Appellate Court ☐ Remanded or Reversed ☐ Transferred from another district (specify) ☐ Multidistrict Litigation ☐ Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER 11 U.S.C. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions)

JUDGE

Deputy

DATE August 28, 2007

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiff - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviation. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place the "X" in one of the boxes. If there is more than one basis of jurisdiction, precedent is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When box 4 is checked, the citizenship of the different parties must be checked. (See Section III below. Federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause has more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.
(rev. 07/80)